

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 23, 1999**

**IN RE:**

**APPLICATION OF NET2000 GROUP, INC., FOR  
AUTHORITY TO COMPLETE CORPORATE  
REORGANIZATION, TO CHANGE ITS NAME AND  
TO GUARANTEE CERTAIN DEBT OBLIGATIONS**

**DOCKET NO. 99-00229**

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**ORDER APPROVING CORPORATE REORGANIZATION, NAME CHANGE  
AND THE GUARANTEE OF CERTAIN DEBT OBLIGATIONS**

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This matter came before the Tennessee Regulatory Authority ("Authority") on the Application of Net2000 Group, Inc. ("Net2000"), Net2000 Communications, Inc. ("Net2000 Communications"), Net2000 Communications Holdings, Inc. ("Net2000 Holdings"), Net2000 Communications Group, Inc. ("Net2000 Communications Group") and Ntel Communications LLC ("Ntel") (collectively, the "Applicants" or the "Net2000 Companies") for Authority approval of the following three (3) transactions:

1. The *pro forma* transfer of control of Net2000 from its current shareholders to Net2000 Communications;
2. Net2000's name change to "Net2000 Communications Services, Inc."; and
3. The proposed pledge of stock and assets of Net2000 and Ntel as part of loan agreements executed by Net2000 Communications Group.

The Directors of the Authority considered this matter at a regularly scheduled Authority Conference held on April 20, 1999.

**FILE**

From the Application and the record existing in this matter, the Directors have determined the following:

1. That the Authority has jurisdiction over the subject matter of said Application pursuant to Tenn. Code Ann. §§ 65-4-101, 65-4-109, 65-4-112 and 65-4-113.

2. Net2000 Communications is the ultimate corporate parent of the Net2000 Companies. Net2000 Holdings is a wholly owned subsidiary of Net2000 Communications and the corporate parent of Net2000 Communications Group. Net2000 is a wholly owned subsidiary of Net2000 Communications Group, and Ntel is a wholly owned subsidiary of Net2000. All of the Net2000 Companies are headquartered in McLean, Virginia, and all but Ntel are privately held corporations duly organized and existing under the laws of the State of Delaware. Ntel, a Virginia limited liability company, provides local telecommunications services in Maryland, Virginia, and the District of Columbia.

3. Net2000 is the only Net2000 Company certificated to provide interexchange telecommunications services in the State of Tennessee. Net2000 was granted this authority by this agency in Docket No. 98-00164.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

After consideration of the entire record in this matter, including the Application, the Directors find and conclude as follows:

##### **I. The *pro forma* transfer of control of Net2000 from its current shareholders to Net2000 Communications**

A merger between regulated public utilities is not valid until approved by the Authority under the provisions of Tenn. Code Ann. § 65-4-112, which provides in pertinent part as follows:

- (a) **No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority, even**

though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state. (Emphasis supplied).

Under Tenn. Code Ann. § 65-4-112, the Authority must approve any lease, merger, or consolidation of property, rights or franchises among public utilities of like character. Because the *pro forma* transfer of control of Net2000 from its current shareholders to Net2000 Communications does not effectuate any consolidation among public utilities, under this code section, Authority approval of the transaction is not required. Nonetheless, the Applicants state that the transfer of control had no effect on the tariffs, operations or management of Net2000. Thus, the transfer of control has not adversely affected Net2000's provision of telecommunications services.

## **II. Net2000's name change to "Net2000 Communications Services, Inc."**

As verified in an attachment to the application, the name change of "Net2000 Group, Inc." to "Net2000 Communications Services, Inc." has been authorized by the Tennessee Secretary of State. Further, the Applicants state that Net2000 will amend its tariff as necessary to reflect the name change.

## **III. The proposed pledge of stock and assets of Net2000 and Ntel as part of loan agreements executed by Net2000 Communications Group.**

Pursuant to the terms of a Credit Agreement dated November 2, 1998, Net2000 Communications Group (the "Borrower"), Northern Telecom, Inc. ("Nortel") and several other lenders (collectively, the "Lenders") entered into a five year, \$120 million Advancing Term Loan Facility (the "Term Loan") and a five year, \$20 million Revolving Credit/Term Loan Facility (the "Revolving Credit"). The Term Loan and Revolving Credit are secured by a Security Agreement and a Pledge Agreement whereby each of the direct and indirect subsidiaries of the Borrower, including Net2000, Ntel, and Net2000 Holdings, will pledge all of their stock and assets to Nortel.

Tenn. Code Ann. § 65-4-109 requires the Authority to determine that the use or purpose of a financing arrangement is proper and that the arrangement is in compliance with all applicable laws.

These are the only two determinations that must be made in order to approve an issuance of debt or equity instruments by a public utility. This Section also requires prior approval of financing arrangements.

**Use of proceeds:**

According to the Application, the proceeds of the Term Loan and Revolving Credit will be used to finance a portion of Net2000 Communications Group's costs to purchase Nortel equipment and services in order to expand the Net2000 Companies' operations. Based on these representations, the proposed uses of the funds appear to be proper for the purposes of Tenn. Code Ann. § 65-4-109.

**Compliance with applicable laws:**

The Applicants state that the Security Agreement and Pledge Agreement within the Credit Agreement are subject to a Supplemental Agreement which prevents the pledge of stock and assets of Net2000 and Ntel until all regulatory requirements have been met. In addition, because Net2000 was certificated in Tennessee on December 15, 1998, after the execution of the Credit Agreement, Net2000 Communications Group was not a "public utility" as defined by Tenn. Code Ann. § 65-4-101, and thus did not violate the requirement for prior Authority approval of debt issuances under Tenn. Code Ann. § 65-4-109. Further, in a notarized Verification attached to the Application, Charlie Thomas, President and CEO of Net2000 Communications, states that the financing transactions do and will comply with all applicable laws. Based on these representations, it appears that the Credit Agreement is in compliance with the applicable laws for the purposes of Tenn. Code Ann. § 65-4-109.

**IT IS THEREFORE ORDERED THAT:**

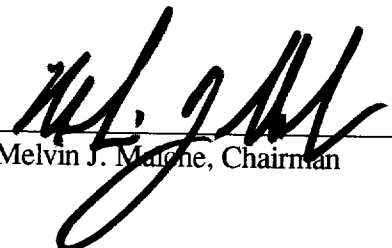
1. The Application requesting the *pro forma* transfer of control of Net2000 Group, Inc. from its current shareholders to Net2000 Communications Group, Inc. is approved.

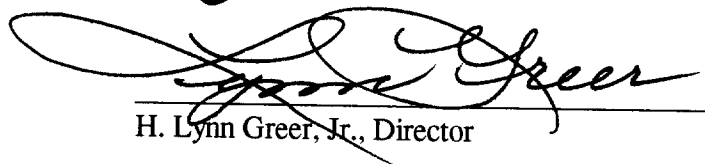
2. Net2000 Group, Inc.'s name change to "Net2000 Communications Services, Inc." is approved.

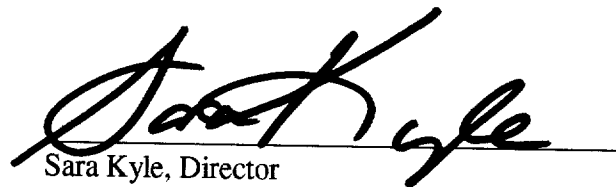
3. The proposed pledge of stock and assets of Net2000 and Ntel as part of loan agreements executed by Net2000 Communications Group is approved.

4. The authorization and approval given hereby should not be used by any party, including, but not limited to, any lending party, for the purpose of inferring an analysis or assessment of the risk involved in lending any amount to the Net2000 Group family of companies. Nothing contained herein creates or is intended to create any liability on the part of the Authority, the State of Tennessee, or any political subdivision thereof for the transaction approved herein.


5. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.

  
Melvin J. Malone, Chairman

  
H. Lynn Greer, Jr., Director

  
Sara Kyle, Director

ATTEST:

  
K. David Waddell, Executive Secretary